

**COMMITTEE ON RULES OF PROCEDURE
IN DOMESTIC RELATIONS CASES**

Friday, August 6, 2004 10:00 am – 3:00 pm

Arizona Courts Building

1501 W. Washington, Conference Room 119

Teleconference #: (602) 542-9006

Web Site: <http://www.supreme.state.az.us/drrc/>

Members Present:

Hon. Mark Armstrong

Annette Burns, Esq.

Hon. Norm Davis

Annette Everlove, Esq.

Hon. Michael Jeanes

Janet Metcalf, Esq.

Hon. John Nelson (telephonically)

Hon. Dale Nielson

Hon. Nanette Warner

Dr. Brian Yee

Members Not Present:

Deborah Fine, Esq.

Bridget Humphrey, Esq.

Phil Knox, Esq.

Richard Scholz, Esq.

Debra Tanner, Esq.

Staff Present

Konnie Neal

Theresa Barrett

Isabel Gillett

Member Represented by Proxy:

Valerie Sheedy for Robert Schwartz, Esq.

Quorum:

Yes

1. Call to Order: Hon. Mark Armstrong

After welcoming Committee members and the determination of a quorum, Judge Armstrong reviewed the new materials contained in the meeting packet:

- Membership List
- Workgroup List
- Workgroup Contact Information List
- Lunch Menu and Order Form from Old Station for 9/10/04 Meeting
- Domestic Violence Conference Registration Form
- Request for Formal Disclosure Draft from Judge Davis
- Memorandum from Judge Nelson re: Sanctions & Contempt Workgroup
- Updated Master *Rules of Family Law Procedure (RLFP)*
- Minutes from July 9, 2004: Judge Armstrong asked for a motion to approve the minutes at this time.

Motion: Minutes Approved.

Seconded

Vote: Minutes Approved.

2. Reports from Workgroups

a. Workgroup 10: Sanctions and Contempt (Judge Nelson, Chair)

Judge Nelson and Janet Metcalf discussed Judge Nelson's memo to Judge Armstrong regarding how this workgroup plans to address the Sanctions and Contempt Section.

Janet asked the members if the sanctions and contempt rules should be left in the existing *RLFP* Sections, where applicable, or should there be a separate Sanctions and Contempt section in the *RLFP*. Judge Warner stated that she believes Sanctions should be made a separate section, and that contempt should be a part of it. Judge Armstrong asked that "Rules" be changed to "Orders." Judge Davis was concerned about the final document being too large. He said we need to cut down where we can and do not need separate sections for each category. Judge Armstrong said there is a need to address civil arrest warrants and distinguish between child support warrants. Annette Everlove suggested that sanctions for violation of custody orders be included. She feels this will give the bench security and alert the parties and attorneys to the options.

Judge Armstrong pointed out there is a list of sanctions in A.R.S. § 25-414. Judge Davis agreed and said that sanctions for discovery are rare. He said he can see a case for sanctions being appropriate; however, he was concerned about the possibility of being too myopic and said that we cannot foresee every scenario.

The consensus of the group was that the *RFLP* would include a separate Sanctions and Contempt Section.

Judge Armstrong reminded the members that Rule 13 – Unsworn Declarations Under Penalty of Perjury – still needs to be cleaned up if we are going to include sanctions for perjury under this rule.

b. Workgroup 3: Simplified (Uncontested) Proceedings (Annette Burns, Chair)

Annette stated that there were no additional changes from last month, that the section had been reviewed by those in rural counties, and the workgroup believes this section is complete. Annette said this section may be removed from the next agenda.

c. Workgroup 4: Emergency and Temporary Orders (Judge Davis, Chair)

Judge Davis also stated that he believes his workgroup is finished with this section and that it can also be deleted from the agenda for the next meeting.

d. Workgroup 6: Settlement and Pretrial Resolution Cases (Judge Warner, Chair)

Some of the changes on this section are as follows:

Rule 9 (A) – Sanctions:

- Remove “k” from “finding kof,” and
- Remove “a default” from “rendering a default a judgment by default.”

Rule 9 (B) – Attorneys Fees:

- Change “Attorneys” to “Attorneys”;
- Remove “mediator or” from “the mediator or settlement conference judge”;
- Add “or commissioner” after “settlement conference judge”;
- Remove “or mediation” after “parties taken in the settlement conference,” and
- Remove reference to A.R.S. §25-109(G).

TASK: Judge Warner will provide Konnie with other changes to be made to the ADR Section of the *RLFP* master draft.

Dr. Yee suggested that asking for confidentiality in one instance (i.e., mediation) and not the other (i.e., settlement conferences) might prove to be a problem. Annette Everlove stated that there is no confidentiality in settlement conferences in Pima County. Judge Armstrong stated that this Committee is creating the rules for settlement conferences, and he had no problem with having no confidentiality. The members agreed that no confidentiality was appropriate for settlement conferences.

e. Workgroup 5: Disclosure and Discovery (Judge Nelson, Chair)

Janet Metcalf stated that the current Rule 1 (51(b)) on page 60 of the RFLP draft – Request for Formal Disclosure - would be replaced by Judge Davis’ simplified Routine Disclosure statement (green sheets in today’s packet). She said that it was the opinion of the workgroup that Judge Davis’ document should be used for all cases and that a formal disclosure will only be needed if a party requests it: nothing is automatic – no request, no disclosure.

Judge Nelson added that only 10% of cases warrant any disclosure, and deleting the formal disclosure would make it easier for the judiciary. He said that complex cases are rare and asked, “Why should there be a rule that will be ignored?”

Judge Warner did not agree. She stated that many people need to know what the spouse earns, and disclosure is needed for that. Valerie Sheedy agreed with Judge Warner and told the members that in her practice, some of her clients are afraid to have her ask for this information directly from the spouse.

Judge Nelson said the whole purpose of writing the *RLFP* was to make the rules simple for everyone. Judge Warner stated that she did not believe the Supreme Court would go along with this.

Janet said that an attorney can send out an interrogatory to get information. She stated that 26.1 bogs down staff, but deleting it still leaves all other mechanisms in place to get this information. Annette Burns said if a party has an attorney, he or she will get disclosure, but if the party is a *pro se*, he or she will not get it. Discussion ensued.

TASK: Judge Nelson said he would go back to the workgroup and work out a limited disclosure rule and address the concerns raised at this meeting.

Judge Armstrong posed the question as to whether or not there should be some sort of automatic disclosure. The majority of the members were in favor of that.

Judge Armstrong said there is a side issue regarding proposed uniform interrogatories. He felt that some of the questions on page 150, from 11(A) were inappropriate, and he stated that listing some of them as interrogatories is problematic. Annette Burns said that #11 and #13 go too far for uniform interrogatories. The decision of the members was to remove #11 and #13.

TASK: Janet Metcalf will work with Konnie to revise the proposed uniform interrogatories.

3. Break for lunch

4. Reports from Workgroups (Continued)

e. Workgroup 5: Disclosure and Discovery (Continued) (Judge Nelson, Chair)

The members discussed page 149, question #10 – Custody. Janet said that the workgroup was trying to define sole, joint legal, and joint physical custody. She also stated that there was an Alternative B that was not included on the page. Alternative B asked questions such as, “Where do you want your children to live?” Judge Davis asked if we really want to be that specific. He asked if we want a more general way of asking the questions or do we want formal definitions of custody. Judge Warner thought it was a good idea to define these for people; however, Annette Burns said that if we add definitions, they need to be absolutely perfect.

Judge Davis said that the problem with using definitions is that when you ask the parties what they want, it is a control issue that might be meaningless and could polarize people unnecessarily. He also felt that there are too many issues for these to be put into interrogatories. He suggested that the following questions need to be asked:

1. Where do you want your children to live?
2. What about weekends?
3. What about decision-making?

Dr. Yee agreed. He said it only makes sense to find out in normal English what the parties want. Janet said she would fax Alternative B to Judge Davis for his input for the next meeting.

TASK: Janet will fax Alternative B to Judge Davis.

Michael Jeanes stated that the members have done a great job, but he believes it will still be a complex set of rules for people without attorneys when it has been finalized. He agreed with Judge Davis that simpler is better, and anything that can be done to ease the process for *pro pers* is better for the system. Judge Armstrong stated that this was his goal, also.

f. Workgroup 9 – Post-Judgment Proceedings (Judge Davis, Chair)

Judge Davis stated that the workgroup members have not had a chance to meet, and he would be setting up a workgroup meeting before the next Committee meeting.

After the reports from the workgroups, Judge Armstrong reminded the members that a set of rules must be finalized by the January, 2005 meeting, and it would be even better if they were completed by the end of the year. He said there are only five more meetings left, which does not leave the members much time to finish the task.

At this point, Judge Armstrong said that workgroups could meet if they wished, and he would reconvene the meeting at 1:45 if there was a request from any workgroup to do so. None of the workgroups requested to reconvene.

5. Next Meeting

The next Committee meeting will be held on **Friday, September 10, 2004**, at the Arizona Courts Building, 1501 W. Washington, Conference Room 345, Phoenix, Arizona. The conference call number for that meeting is **602.542.9006**.

6. Adjournment

Judge Armstrong adjourned the meeting at 2:00 p.m.